IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO. 838 OF 2004

Office Notes, Office Memoranda of of Coram, appearances, Court's orders and Registrar's orders : Court's or Judge's orders

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Mr. L.C. Chogle i/by Clifford Martis for the appellant.

Mr. A.Y. Sakhare for the respondent No.1.

Mr. Snehal Shah with Mr. Ramachandran N. i/by Narayanan & Narayanan for the Respondent No.2.

CORAM: P.V. KAKADE, J.

DATED: 24TH SEPT., 2004

P.C.:

1. Heard learned counsel for the parties.

2. Rule. Rule made returnable forthwith.

3. This is an appeal against the order passed in Notice of Motion No. 5159 of 2001 in L.C. Suit No. 6517 of 2001 passed by the Judge, City Civil Court, Bombay, dated 2.9.2004 dismissing the notice of motion taken out by the plaintiff against the issuance of notice under Sec.351 of the B.M.C. Act, directing them to remove the unauthorized structure which is the suit property.

2. Perusal of the entire evidence on record shows that, apparently there is no concrete evidence to show that the suit structure existing prior to bottom line, however, the judgment in Suit No. 1554 of 1958 which was decided on 12.7.1961 appears to make mention to "lean to roof on the passage near the kitchen of the Shop No.9", which in all probabilities, the suit structure sketch provided by the plaintiffs as well as the respondent No.2. I have also perused sketches and it is apparent therefrom that, to meet the ends of justice, it would be necessary to adjudicate the suit finally on merits instead of admitting the appeal and keeping it pending for a long time.

3. Hence, it is hereby directed that the lower Court shall adjudicate the suit on merits expeditiously and in any case within six months from the date of this order after giving opportunity to both sides to lead necessary evidence and after assessing the correct legal position in respect of the property involved.

Pending the hearing of the suit, the parties shall maintain status-quo.

With these directions, the appeal is disposed of with no order as to costs.

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